

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

YOLANDA JACKSON, as Administrator)
of the Estate of KEVIN CURTIS,)
#Y22898,)

Plaintiff,)

v.)

WEXFORD HEALTH SOURCES, INC.,)
EVA LEVEN, MOHAMMED SIDDIQUI,)
GAIL WALLS, NICKOLAS MITCHELL,)
CHARLES FRERKING, JEREMY FRERICH,)
and ANDREW BENNETT,)

Defendants.)

No. 3:20-cv-00900-DWD

DEPOSITION UPON ORAL EXAMINATION
OF
RYAN HERRINGTON, M.D.

(Via Videoconference)

* * *

U.S. LEGAL FILE NO.: 6478454

DATE OF PROCEEDINGS: TUESDAY, NOVEMBER 7, 2023

[REDACTED]

92

1 A. Well, I mean, I just read the reports or reviewed
2 them. I didn't, like, conscientiously ask myself if I --
3 you're asking me did I assume that they're accurate?
4 Q. Yes.

5 A. So I assumed that they were, like, credibly
6 written, so yes, I did assume they were accurate.

7 And what I will is that when I was able to
8 cross-reference charts between Lippert and my assessment, I
9 found that there was substantial agreement between what I
10 found and what Lippert found; and so I think if I were to
11 make an assessment of whether overall I thought Lippert was
12 accurate, the answer is "yes."

13 Q. And are you talking about cross-referencing
14 specific patients' care or what did you cross-reference?

15 A. Well, there were some patients in the review I
16 did that were Lippert and some that weren't, and of the
17 ones that I felt matched Lippert, I thought there was
18 agreement, substantial agreement between my assessment and
19 theirs.

20 I trust my judgment and my methodology, and so
21 any assumption that I made that Lippert was accurate was
22 reinforced through the course of my expert work on the
23 Curtis case that we're discussing today.

24 Q. And do you have an unredacted version of the
25 report that identifies the names of the patients in the

2 A. No. Those are all redacted.

3 Q. Were you asked to assume it to be true that the
4 patients that you reviewed were, in fact, patients that
5 were identified in the Lippert report?

6 MS. GRADY: Objection; misstates his report.
7 I'll also object to the scope. Again, we're going back to
8 the things that counsel had more than twelve hours'
9 opportunity to depose Dr. Herrington about concerning his
10 original report.

11 (To the witness) You can go ahead, Doctor.

12 (To counsel) And I'll ask that we please
13 keep this tied to the rebuttal report, given the
14 substantial additional time that's already been provided
15 for counsel to depose Dr. Herrington on the first one.

16 Q. (Ms. Kinkaide continuing) I'm on page 6. Do you
17 need me to repeat the question or have you still got it?

18 A. No; I think I still have it.

19 So I didn't have, like, Social Security numbers
20 or patient I.D. numbers to cross-reference; but when I saw,
21 like, almost exact clinical information, like this patient
22 fell in the bathroom on this day and the age was the same,
23 that was enough for me to conclude on a more-likely-than-not
24 basis that it was the same patient.

25 Q. How did you know to even look to cross-reference?

1 A. I just --

2 MS. GRADY: (To the witness) Hold on, Doctor.

3 I'm going to object because I think that
4 calls for potential communications between counsel and
5 Dr. Herrington that is expressly protected from disclosure
6 by Rule 26(b).

7 (To the witness) I'm going to advise you
8 not to answer, Dr. Herrington.

9 Q. (Ms. Kinkaide continuing) Are you taking her
10 advice?

11 A. Yes.

12 Q. So it sounds like you're refusing to tell me how
13 it was that you decided to cross-reference the cases that
14 you reviewed with the cases laid out in the Lippert report.

15 MS. GRADY: That wasn't your question. Is that
16 the question you're asking?

17 MS. KINKAIDE: That is the question I'm asking.

18 MS. GRADY: Can you restate it so I can decide
19 whether I need to object.

20 MS. KINKAIDE: Can the court reporter restate it
21 for me?

22 (The record was read, as requested.)

23 MS. GRADY: I think he did answer that question,
24 and then I think the question was "How did you even know to
25 cross-reference them?" That was the question I objected to

95

1 and advised Dr. Herrington to not respond to pursuant to
2 Rule 26(b)(4).

3 MS. KINKAIDE: And if you can just let me speak
4 for a moment, then I asked the question that she read
5 initially, "Are you refusing to answer?" And you said, "Is
6 that the question," and I said, "Yes, that's the question,"
7 so that is the question I'm posing.

8 (To the reporter) Can you read that
9 question back, the "Are you refusing to answer..."
10 question.

11 (The record was read, as follows:

12 "QUESTION: So it sounds like
13 you're refusing to tell me how it was
14 that you decided to cross-reference
15 the cases that you reviewed with the
16 cases laid out in the Lippert
17 report.")

18 MS. GRADY: I'm going to object. That misstates
19 the question that was posed and the objection that was

20 raised. That question has not been asked.

21 (To the witness) Go ahead.

22 MS. KINKAIDE: That is the question. That's what
23 I'm asking right now.

24 MS. GRADY: You're asking if he's refusing to
25 tell you how he decided, but that's not the original

96

1 question you asked. Do you want to ask that question? Ask
2 that question.

3 MS. KINKAIDE: That's what I've been trying to
4 do. That's what I'm doing. I had her repeat it to ask
5 that question to the, Doctor.

6 MS. GRADY: I see. Okay, I'm sorry.

7 Q. (Ms. Kinkaide continuing) Have you got it,
8 Dr. Herington?

9 A. No, I don't have it.

10 MS. KINKAIDE: (To the reporter) Can you read it
11 one more time for us.

12 (The record was read, as follows:

13 "QUESTION: So it sounds like

14 you're refusing to tell me how it was

15 that you decided to cross-reference

16 the cases that you reviewed with the
17 cases laid out in the Lippert
18 report.")

19 MS. GRADY: Objection; misstates the testimony.

20 (To the witness) Go ahead, Doctor.

21 A. So if I'm understanding the question, it's how is
22 it that I decided to cross-reference patients in this
23 case-series review I did in Curtis and Lippert.

24 MS. GRADY: (To the witness) Hold on, Doctor.

25 That's actually not the question, and that matters because

97

1 the answer to that question is protected. She's asking you
2 whether you're refusing to testify about how you decided.

3 A. I guess I just don't understand the question.
4 I'm not refusing to testify. It's just that Lippert -- you
5 know, as an expert I want to use as much documentation as I
6 have access to to generate opinions, and Lippert was
7 available and then these twelve cases were available, and
8 so it made sense to me to see if there was information in
9 Lippert that I could review to potentially assist me in
10 opinion formulation.

11 Q. (Ms. Kinkaide continuing) Do you understand that
12 there were over 600 deaths in the Department of Corrections

13 during the time frame at issue?

14 MS. GRADY: Objection; vague as to time frame.

15 A. Yes.

16 Q. (Ms. Kinkaide continuing) And did you decide to
17 cross-reference the cases you reviewed with the Lippert
18 report as part of your methodology? Was that your choice?

19 MS. GRADY: I'm going to object and instruct the
20 witness not to answer. I think as phrased it calls for
21 things around creation of draft reports that are protected
22 from disclosure by 26(b)(4).

23 Q. (Ms. Kinkaide continuing) Are you taking the
24 advice of counsel?

25 A. Yes.

98

1 Q. And you're refusing to answer that question based
2 on the advice?

3 A. Yes.

4 Q. Were you informed by counsel to cross-reference
5 specifications in the Lippert report with the cases that
6 you reviewed in this case?

7 MS. GRADY: Same objection and same advice.

8 (To the witness) Dr. Herrington, that

9 calls expressly for communications this time that are
10 protected from disclosure by Rule 26(b)(4) because they do
11 not relate to any of the exceptions set forth in that rule.

12 Q. (Ms. Kinkaide continuing) Are you taking the
13 advice?

14 A. Yes.

15 Q. And you're refusing to answer based on the
16 advice?

17 A. Yes.

18 MS. KINKAIDE: Madame Court Reporter, can you
19 please certify this portion of the transcript.

20 THE REPORTER: I will index all of the questions
21 not answered in the index on page 3 of the transcript.

22 MS. GRADY: Ms. Kinkaide, can I ask you to avoid
23 any unnecessary need to involve the court. Can you just
24 tell me section of 26(b)4(c) you believe that your
25 questions relate to that would allow the question to be

99

1 answered?

2 MS. KINKAIDE: We can discuss that on the break
3 but I have limited time. I've asked it a bunch of times.
4 It's pretty straightforward.





5 I've also already told you that it's

6 assumptions that were provided to the doctor that these
7 patients were, in fact, identified in the Lippert report.

8 MS. GRADY: Oh. If you want to ask that, I
9 agree. You're more than welcome to ask him whether he made
10 any assumptions or whether counsel told him to make any
11 assumptions about the identity of any of the individuals
12 and how they compared to the Lippert report at all. I
13 agree that that's fair game, so to be clear, my objection
14 does not cover that.

15 MS. KINKAIDE: I think my question covers the
16 rest. You're clearly not going to waive the objection and
17 he's following your advice, so I'm going to have to take it
18 up later but we can take it up on a break, but I've got
19 more in the limited time I have left.

20 MS. GRADY: That's fine. As part of the
21 certification of this question, I'd just like to note that
22 I've expressly requested to receive that information and I
23 would be happy to be take it up at a break. That would be
24 fine. I would just like that to be part of the record, as
25 well.



123

1 I do just want to basically, like, close this thing on the
2 privilege issue.

3 So I think I agree with you that if there
4 are any questions about assumptions that were made,
5 Dr. Herrington would be required to answer those question,
6 so I just want to make sure we're on the same page.

7 And the same is true with documents
8 provided to him I just want to make sure we're on the same
9 page. It would be true that if we provided him only
10 portions of documents or directed him to review only
11 portions of documents, then those questions would be fair
12 game, too, but I think the questions as asked, we are going
13 to stand on the objections.

14 Okay. We can go back on. Thanks.

15 Q. (Ms. Kinkaide continuing) So the eleven patients
16 in addition to Mr. Curtis, those patients' names, were they
17 provided to you by counsel?

18 A. Yes.

19 Q. Were you ever informed why those patients were
20 selected?

21 MS. GRADY: I'm going to object that that calls

22 for discussions protected by Rule 26(b)(4).

23 Q. (Ms. Kinkaide continuing) Are you going to
24 answer the question?

25 A. I'm going to decline to answer that question.

124

1 Q. Is that based on her advice?

2 A. Yes.

3 MS. KINKAIDE: (To the reporter) I would ask to
4 certify that question for the same reasons.

5 Q. So getting back to your report, how did
6 Mr. Freeman die, in your mind?

7 A. I don't have an opinion on Mr. Freeman.

8 Q. How did Mr. Murray die, in your mind?

9 A. I don't have an opinion on Mr. Murray.

10 Q. On page 10 of your report when you talk about
11 "highly sensitive testing," what specific testing are you
12 referring to?

13 A. So "highly-sensitive testing" comes from the
14 "Comments" -- "highly sensitive liquid chromatography,
15 quadruple time of" -- I think it's "light mass
16 spectrometry." My copy is a little fuzzy, but that's where
17 the "highly sensitive" language came from.

18 Q. What is the error rate for that test?

19 A. It doesn't say.

20 Q. Do you know?

21 A. I don't. I focused on the word "highly." That's

22 the word I looked at -- "high sensitivity."

23 Q. And "high sensitivity" means it's going to pick
24 up mass particles; that it's not going to miss particle; is
25 that right?

A diagram showing a vertical list of 15 items, each with a small square icon to its left and a horizontal bar to its right. The bars vary in length and position, representing different levels of completion or status.